

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 JUAN PINEDA,

5 Plaintiff,

6 - versus -

7 BIG CITY REALTY MANAGEMENT,
8 LLC ET AL.,

9 Defendants.

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10 TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
11 BEFORE THE HONORABLE BRIAN M. COGAN
12 UNITED STATES SENIOR DISTRICT JUDGE
13 VIA VIDEOCONFERENCE

14 APPEARANCES

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19 -and-

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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

1 (In open court; all present via videoconference.)

2 THE COURTROOM DEPUTY: Case number 22-CV-5428.

3 Pineda versus Big City Realty Management LLC, et al.

4 Will counsel please state their name for the record
5 beginning with plaintiff's counsel.

6 MR. RAPAPORT: Good afternoon, your Honor. This is
7 Marc Rapaport with the Rapaport Law Firm as co-counsel for the
8 plaintiff.

9 MS. MILLER: Good afternoon, your Honor. Meredith
10 Miller, co-counsel for the plaintiffs or plaintiff.

11 MR. METIS: Peter Metis, Law Offices of Peter Metis
12 counsel for the defendants, your Honor.

13 THE COURT: Let me start by saying plaintiff's
14 counsel seems to be under a misimpression. We're not having a
15 collective action in this case. I set a deadline, I got a
16 letter from plaintiff's counsel saying we are not going to
17 move for a collective action, that date has long passed and I
18 have not been asked to reinstate it, which I wouldn't if I
19 were asked, so whatever these missing documents have to do
20 with, it's not that. Okay?

21 Can I just ask, Mr. Rapaport, why are you telling me
22 that you need these documents for a collective action when you
23 sent me a letter saying I'm not going to move for a collective
24 action?

25 MR. RAPAPORT: When we sent that letter, your Honor,

1 we had minimal information. We could not have brought a
2 collective action as a defense.

3 THE COURT: Right, that's why you've got the class
4 action remedy, which you can still pursue if you want to,
5 okay. That's fine.

6 Second, I need to ask defense counsel, why are we
7 discovering documents that should have been produced at the
8 beginning of the case late in the case?

9 MR. METIS: Well, your Honor, I mean, I think we've
10 produced what we could produce based on what the plaintiff's
11 allegations were. There was no class action yet, you know,
12 they -- they -- they at some point said they wanted to
13 produce -- you know, resolve the case and then they at the
14 last minute sent discovery documents out and we tried to
15 produce what we could based on what the, you know, the
16 plaintiff's sole claims were and we did. And we produced
17 other things since then, but that's the extent of the
18 production. It's not -- you know, we haven't produced for 23
19 buildings, you know, 24 supers, we haven't produced that, no.

20 THE COURT: The question is, did the document
21 requests that you were served with request those documents?

22 MR. METIS: Well, I think they requested some of the
23 documents, but we felt that they were -- we objected to them,
24 felt that they were too broad and, you know, didn't bear on
25 anything in this case.

1 THE COURT: Okay. The complaint plainly alleged a
2 class action, so we knew there was a class action. Let me ask
3 plaintiff's counsel, when were the documents, for example, the
4 policies and procedures regarding wages to superintendents and
5 porters, when were those served?

6 MR. RAPAPORT: They were served timely, your Honor.
7 I'm going to give you the exact date in one minute, because I
8 do have that. We served our notices on December 13th. We
9 served a notice to produce and interrogatories and the
10 responses were served in -- we got defendant's production on
11 February 10th and then we proceeded very quickly with two
12 depositions of the individual defendants, and it became
13 apparent during those two depositions that the basic documents
14 were not produced for -- by way of example, which counsel did
15 to his credit emailed to us yesterday the management
16 agreements for the buildings. There is one management
17 company, a group of owners, we received three of those late
18 yesterday. But in terms of our demand, we did not delay.

19 THE COURT: Is there any question as to whether your
20 demand encompassed all the buildings?

21 MR. RAPAPORT: We made that very clear. Our demands
22 referred to the schedules of buildings that are attached to
23 the complaint. There's a Schedule A and Schedule B, I believe
24 those are approximately 30 buildings more or less. The
25 demands were very specific in that regard.

1 THE COURT: So, Mr. Metis, tell me again -- look,
2 try to find a way to persuade me I shouldn't impose a
3 sanction. I'm not understanding it because --

4 MR. METIS: Well, your Honor --

5 THE COURT: Because --

6 MR. METIS: -- I think what happened was, you know,
7 they -- plaintiff's counsel came to me and said, we're not
8 going to pursue a collective action, let's resolve the matter.
9 We tried to resolve the matter, then they sent me in -- you
10 know, they waited a month and a half to send me discovery
11 documents and said no, you know what? We're not going to
12 resolve the matter -- or they actually never said that, they
13 just sent discovery documents out.

14 Those did get delayed on my end, but we eventually
15 answered them and they -- you know, they knew that they were
16 late. They didn't -- they didn't request anything, they
17 didn't object to my objections. There was nothing that was
18 said. I said, here are the documents I have, they took them,
19 they did depositions. They never said that no, we're
20 insisting on going forward with additional documents. So, you
21 know, that was -- you know, that's the way the responses ended
22 up. It would have been -- you know, we have -- you know, we
23 just the totality of this plaintiff that was produced.

24 THE COURT: I just don't understand whenever anyone
25 says to each other, if you've got a court order in place that

1 says complete discovery and you get served with a document
2 demand, I mean, okay, you objected. Did you object to the
3 documents that you're now producing?

4 MR. METIS: I don't believe so, no. I produced --
5 the only documents he came back to me -- pre --
6 post-depositions and requested that I get to him before the
7 close of discovery were the management agreements. I told him
8 they are all the same, I would get him three of them. We
9 agreed I would produce three and we would stipulate that
10 they're all pretty much exactly for every building they are
11 the same, and that's all.

12 I further -- I objected to the Schedule B buildings
13 because those are not defendants in this action, so I didn't
14 feel I needed to produce discovery for entities that aren't
15 even in this case. So that was the extent of the production.

16 THE COURT: Mr. Rapaport, when you didn't get
17 management agreements for the other entity or the documents
18 that you claimed to have discovered had not been produced to
19 you at the depositions, why didn't you do something before the
20 depositions? You knew you didn't have other management
21 agreements, right?

22 MR. RAPAPORT: So we got the documents, your Honor,
23 literally within, I'm going to say, five or six days before
24 the depositions and we had a looming deadline. And our depo
25 notices called for -- they were duces tecum, called for

1 defendants to bring those. We do have -- with regards to the
2 most important documents, the management agreements, we do
3 have them as of yesterday.

4 Should we have been -- put more pressure on
5 defendant, well, our goal was to work with the time period we
6 had, and we did the depositions we needed, but your Honor is
7 correct, we could have brought this to the Court, we chose to
8 move forward and we actually did a lot of discovery in the
9 intervening period.

10 THE COURT: What do you need now that you still
11 don't have?

12 MR. RAPAPORT: We need a list of the supers and
13 porters that worked at the Schedule B buildings and that was a
14 rog, it wasn't responded to. The individual defendant
15 Mr. Alfonso said he would provide it, we put a blank line in
16 the transcript for him to list those.

17 We need the communications between the individual
18 defendants regarding wage and hour practices. One of the
19 defendants, Mr. Zamir testified that such communications
20 existed, that he had not searched his emails or text messages
21 and Mr. Metis said he would take that request under
22 advisement. We still do not have them now. Those two sets of
23 items and information would be important for us, but we, like
24 I said, your Honor, in a short period of time made -- how to
25 manage to catch up. Those are the items.

1 THE COURT: Mr. Metis, I don't see how you couldn't
2 produce the emails talking about wage policies. Those are
3 fundamental, right?

4 MR. METIS: You know, I don't even know if they
5 exist, your Honor. It first came to -- Mr. Zamir testified
6 that there may be some at his deposition, that was the first
7 I've ever heard of them as to, you know, specific wage
8 policies. I don't -- I had him go back and so far he hasn't
9 found any. So, you know, I understand that that came up in
10 the deposition and that may sort of resurface something, but
11 as far as I know, there are none. There were none before. As
12 we sit here today, I don't know of any, but I did tell him
13 he's got to do a thorough search, which he's in the process of
14 doing, but I haven't received back any specific emails in that
15 regard.

16 THE COURT: Let me suggest to you, it's not your
17 client who ought to be doing the searching, it's you. Because
18 clients sometimes find something bad and so they just kind of
19 leave it there.

20 MR. METIS: Well, your Honor, we can do -- we can
21 search. I can do some search on the email, but he knows what
22 they are and he knows who he has and whatnot. You know, I'll
23 do the best I can, but I haven't seen anything from what I've
24 been shown that's relevant to whether or not Kobi and --
25 Mr. Zamir and Mr. Alfonso had any specific emails regarding

1 wage claims or wage policies.

2 THE COURT: So you're going to complete this search
3 and turn over anything else that was asked for at the
4 depositions that has not been produced within a week, right?

5 MR. METIS: Well, I don't have a list of what was
6 asked at the deposition.

7 THE COURT: It's in his letter. It's in his letter
8 to me. It's in the joint letter saying here's what we're
9 missing.

10 MR. METIS: Well, I mean other than that that's
11 fine. I can make a -- you know, I can propound those.

12 THE COURT: Okay. Give him that in a week.

13 Mr. Rapaport, once you get those in a week, if
14 there's anything, do you need anything else?

15 MR. RAPAPORT: I believe that's it, your Honor.

16 THE COURT: Okay.

17 MR. RAPAPORT: And the list of supers at the
18 Schedule B buildings, supers and porters.

19 THE COURT: Right. So he's going to get you all
20 that stuff in a week and they'll be no more discovery after
21 that and we'll just go to trial.

22 Are you going to move for class certs, or you don't
23 know yet?

24 MR. RAPAPORT: Yes, your Honor.

25 THE COURT: When are you going to do that?

1 MR. RAPAPORT: Whenever your Honor sets the
2 deadline --

3 THE COURT: Two weeks after you get these remaining
4 documents.

5 MR. RAPAPORT: Yes, your Honor.

6 THE COURT: Mr. Metis, I'm sure you've had the
7 conversation with your client in which you told your client
8 that, you know, as much as you're paying me, and I'm sure it
9 hurts you to pay me, if the plaintiff prevails on this case
10 you're going to have to pay him maybe even more than you're
11 paying me, you've had that conversation, right?

12 MR. METIS: Oh, yes, I've had that conversation.

13 THE COURT: Okay. So we're going to finish up the
14 remaining items that are outstanding in a week. Two weeks
15 after that we're going to have the class cert motion. I'll
16 look at the class cert motion and I'll decide whether I want
17 to set a trial date now or after I've determined the class
18 cert motion. Okay.

19 MS. MILLER: Your Honor --

20 THE COURT: Yes.

21 MS. MILLER: -- so does that dispense with the
22 premotion letter for that?

23 THE COURT: Yes, it does.

24 MS. MILLER: Okay. Thank you.

25 THE COURT: Okay. Anything else we need to talk

1 about?

2 MR. RAPAPORT: Not for plaintiffs, your Honor.

3 THE COURT: Okay. Thank you all for calling in. We
4 are adjourned.

5 MR. METIS: Thank you, your Honor.

6 MS. MILLER: Thank you.

7 (Matter concluded.)

8 * * * * *

9 I certify that the foregoing is a correct transcript from the
10 record of proceedings in the above-entitled matter.

11 s/ Georgette K. Betts

June 2, 2023

12 GEORGETTE K. BETTS

DATE